TABLE OF CONTENTS.

Citations to Opinions Below ---- 2

Jurisdiction ---- 2

Questions Presented ---- 3

Constitutions and Statutes Involved ---- 3

Statement of the Case ---- 4

Reasons for Granting the Writ ---- 10

I. The decision of the Ohio Supreme Court conflicts with the decisions of the federal courts of appeals as to whether acceptance of Hill-Burton funds by private, non-profit hospitals carries with it the obligation to observe federal constitutional mandates ---- 10

II. The decision of the court below conflicts with the decisions of the federal courts as to constitutionally required minimum elements of due process essential to an administrative evidentiary hearing 12

III. The court below clearly erred in holding that the Civil Rights Act of 1871 was inapplicable to the instant case ---- 15

APPENDIX.

(Separately Printed.)

APPENDIX A. Opinions and Judgments Below:

Opinion of the Court of Common Pleas of Cuyahoga County, Ohio ---- 1

Opinion of the Court of Appeals of Cuyahoga County, Ohio ---- 5

Orders of the Supreme Court of Ohio ---- 8

APPENDIX B. Portions of the Record Below Wherein Evidence of Non-Compliance with Federal Constitutional Requirements are Shown:

Excerpts from Record of the Court of Common Pleas of Cuyahoga County, Ohio 9

Questions of Law Presented to the Court of Appeals of Cuyahoga County, Ohio 57

Questions of Law Presented to the Supreme Court of Ohio 58

APPENDIX C. Constitutional and Statutory Provisions:

Constitution of the United States. Amendment XIV, Section I 61

United States Code, Title 42:

§ 291. Congressional declaration of purpose ... 61

§ 1983. Civil action for deprivation of rights ... 62

§ 1985. Conspiracy to interfere with civil rights—Preventing officers from performing duties 62

TABLE OF AUTHORITIES.

Cases.

Birnbaum v. Trussell, 371 F.2d 672 (2nd Circ. 1966) ---------- 13, 14, 16

Chiaffitelli v. Dettmer Hospital, Inc., --- F.2d --- (6th Circ. 1971) [No. 20390; decided and filed, Jan. 5, 1971] ---------- 11

Citta v. Delaware Valley Hospital, 313 F. Supp. 301 (E.D. Pa. 1970) ---------- 11, 13, 14, 16

Esteban v. Central Missouri State College, 277 F. Supp. 649 (W.D. Mo. 1967) aff'd 415 F.2d 1077 (8th Circ. 1969) ---------- 13

Goldberg v. Kelly, 397 U.S. 254 (1970) ---------- 12, 14

Jones v. Snead, 431 F.2d 1115 (8th Circ. 1970) ---------- 13

Meredith v. Allen County War Memorial Hospital Commission, 397 F.2d 33 (6th Circ. 1968) ---------- 13, 15, 16

Orr v. Trinter, --- F. Supp. --- (S.D. Ohio 1970) --- 14

Sams v. Ohio Valley General Hospital Association, 413 F.2d 826 (4th Circ. 1969) ---------- 10, 11

Scoggin v. Lincoln University, 291 F. Supp. 161 (W.D. Mo. 1968) ---------- 14

Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (4th Circ. 1963), cert. den. 376 U.S. 938 (1964) ---------- 10, 11

Constitution and Statutes.

Constitution of the United States:
Amendment V ---------- 10, 11, 12
Amendment XIV ---------- 3, 9, 10, 11, 12
28 U.S.C. 1257(3) ---------- 2
42 U.S.C. 291 ---------- 3, 11
42 U.S.C. 1983 ---------- 3, 12, 15
42 U.S.C. 1985(3) ---------- 3, 15

In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. _____.

S. J. PASTORELLE,
Petitioner,

vs.

J. W. COLLINS, *et al.*,*
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Ohio.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Ohio entered in the above entitled case on December 23, 1970.

---

* List of all respondents:

Jay W. Collins	Karl S. Alfred
William Irrgang	Emerson B. Beery
Rolland F. Smith	Edward B. Depp
Paul H. Torbet, Esq.	Frederick Dickman
Chester D. Christie	William E. Forsythe
Robert W. Cornell	Hudson D. Fowler, Jr.
J. F. Davis	Vernon D. Hacker
William F. Hecker, Esq.	Vincent T. LaMaida
William R. Hough	John Messina
Robert C. Palmer	Alexander R. Miller
Paul Priest	Theodore V. Parran
Kenneth G. Reider	L. J. Perme
Kenneth J. Sims	Jay B. Price
William H. Wilson	W. W. Tuckerman
R. R. Pierce	John L. Whitaker
William H. Martin	Paul S. Dickey
Louis A. Vogel	Robert C. Waltz
Grafton C. Fanney	J. George Furey
Joseph F. Morabito	Richard L. Taylor

CITATIONS TO OPINIONS BELOW.

The oral opinion of the Trial Court Judge is unreported and is printed in the Appendix hereto, page 1.* The opinion of the Court of Appeals for the Eighth Judicial District of Ohio is unreported and is printed in Appendix at page 5. The decision of the Supreme Court of the State of Ohio is unreported and printed in Appendix page 8.

JURISDICTION.

The judgment of the Supreme Court of the State of Ohio was entered on December 23, 1970 (Appendix page 8). An extension of time for the filing of this petition for a writ of certiorari was granted by the Honorable Potter Stewart on March 24, 1971. The jurisdiction of this court is invoked under 28 U.S.C. Section 1257 (3). Since the decision of the Ohio Supreme Court conflicts with the decisions of the Federal Courts of Appeals as to whether the acceptance of Hill-Burton Funds by a private non-profit hospital carries with it the obligation to observe federal constitutional mandates and the decision of the Ohio Supreme Court conflicts with the decisions of this Court and other Federal Courts as to the constitutionally required minimum elements of due process essential to an administrative evidentiary hearing.

---

* For convenience the Appendix has been printed under separate cover.

QUESTIONS PRESENTED.

Whether receipt of funds under 42 U.S.C. 291 (Hill-Burton Funds) by a private non-profit hospital carries with it the obligation to observe the federal constitutional mandates in the termination of an appointment of a physician on its medical staff.

Whether the federal constitutional mandates require minimum elements of due process and natural justice by a private hospital receiving federal funds in terminating the appointment of a physician on its medical staff.

Whether an action lies under 42 U.S.C. 1983, 1985 (3) against the trustees and various committees of a private hospital receiving funds under 42 U.S.C. 291 for failing to comply with the federal constitutional mandates before terminating the privileges of a physician on its medical staff.

CONSTITUTION AND STATUTES INVOLVED.

The constitutional provision involved is Amendment XIV of the Constitution of the United States (Appendix page 61).

The statutory provisions involved are 42 U.S.C. 291 and 42 U.S.C. 1983 and 1985 (3) (Appendix page 62).

STATEMENT OF THE CASE.

The petitioner in this action is a physician, duly licensed to practice medicine in the State of Ohio for more than thirty years. The respondents are either Trustees, the Executive Director, or physicians who are or who have been officials of the medical staff of Euclid Glenville Hospital, or are members of the medical staff of Euclid Glenville Hospital. The petitioner has been engaged in the practice of medicine for more than thirty years and was a member of the active staff of Euclid Glenville Hospital from 1946 to March 22, 1966.

In July, 1965, the respondent Dr. Hacker (Chief of Surgery) was instructed by the respondents Dr. Lamaida (Chief of Staff) and Mr. Collins (Executive Director) to commence investigation into the circumstances surrounding the transfer of a certain patient of the petitioner to another Doctor and another institution. Petitioner received notice of this investigation. Shortly afterwards, the respondent members of the Executive Committee commenced a similar investigation upon the urging of the respondents Hacker and Lamaida. The Rules of the medical staff, which governed the activities of the medical staff and the Executive Committee were silent upon procedures to be used in any investigation (Record pages 295-6).

The Executive Committee of the medical staff commenced an ex parte investigation with reference to the treatment of said patient and, at a meeting held on August 27, 1965, the respondents, Drs. Taylor and Alfred, charged the petitioner with gross carelessness, unprofessional and unskilled treatment of said patient, the petitioner not being present at this meeting (Record page 75).

On September 2, 1965, the petitioner through his Counsel, requested that an independent committee of physicians not connected with the hospital conduct the

investigation, which request was refused (Record pages 88-91).

The petitioner was invited to attend an Executive Committee Meeting on September 10, 1965. After a statement of the purpose of the meeting by the Chairman, the petitioner was asked to defend himself without having been informed of the aforesaid statements and charges made by the respondents Alfred and Taylor (Record pages 91-100, 103).

On or about September 17, 1965, those respondents who were members of the Executive Committee, outside of the presence of the petitioner, discussed the charges and entered into its records false, defamatory and untrue charges that the petitioner had exercised improper professional judgment, care of patients and non-compliance with the hospital staff regulations and policy. The Committee voted to recommend to the Active Staff that the petitioner be removed from the emergency room fracture and orthopedic service prior to October 31, 1965, that the petitioner not be appointed to that service in 1966, that it be required that petitioner have formal written consultation on all major operative surgery, and that petitioner be reduced in rank from active staff to the associate staff (Record pages 142-143; 144-148).

On October 6, 1965, the respondent Executive Committee met with the Professional Matters Committee of the Hospital Trustees in Joint Conference Procedure. The petitioner was not present at this proceeding nor was he notified nor invited to this meeting. The Members of this Joint Conference Committee (composed of members of the Executive Committee who had voted for the recommendations on September 17, 1965, and the Trustee members of the Professional Matters Committee) concurred in the recommendation of the Executive Committee (Record pages 253-261).

The petitioner was called to a meeting of the Executive Committee on October 11, 1965, which meeting the petitioner attempted to record by having a Court Reporter present to make a transcript of said meeting. The use of a Court Reporter was denied to the petitioner and the Executive Committee informed the petitioner that there was urgency for this meeting because a Meeting Notice had been sent to the Active Medical Staff for October 12, 1965, to consider the charges against the petitioner and the petitioner's status. At this meeting (October 11, 1965) no witnesses or Counsel were allowed and the proposed recommendations of the Executive Committee of September 17, 1965, were read to the petitioner (Record pages 260-261).

The Active Medical Staff of Euclid Glenville Hospital was called to a special meeting on October 12, 1965, for the purpose of receiving the recommendations of the Executive Committee of the Active Medical Staff and the Professional Matters Committee of the Trustees of the hospital. The petitioner again attempted to have a Court Reporter present to make a transcript of the meeting and this was again denied (Record pages 262, 263).

Upon receiving the recommendations of the Executive Committee and the Joint Conference Commttee, the Active Medical Staff approved the recommendations of the Executive Committee of the Medical Staff, which called for the removal of the petitioner from the fracture service and also provided that the petitioner be required to have formal written consultation on all major surgical cases and rejected the other recommendations.

This action of the Active Medical Staff was referred to the Professional Matters Committee of the Board of Trustees for recommendation to the Board of Trustees. The Professional Matters Committee was composed of the same individual Trustees who were members of the Joint Con-

ference Committee on October 6, 1965 (Record pages 276-277).

On October 14, 1965, petitioner, through his counsel, requested that the petitioner be allowed to have his counsel and a Court Reporter present at the meeting of the Professional Matters Committee and of the Board of Trustees. This request was denied (Record pages 277, 280 and 284).

The petitioner was required to appear before the Professional Matters Committee without counsel, although his counsel was present at the hospital with a Court Reporter, in spite of the fact that the hospital's General Counsel was present. The Professional Matters Committee met on October 25, 1965 and concurred in the recommendation of the Active Medical Staff, which it, the Professional Matters Committee, in Joint Conference Procedure had recommended to the Active Medical Staff on October 6, 1965 (Record pages 284-287).

On October 26, 1965, the respondent Board of Trustees, at their regular monthly meeting, confirmed the recommendations of its Professional Matters Committee to place the foregoing restrictions upon the petitioner (Record pages 287-292).

On February 25, 1966 at a meeting of the respondent Executive Committee, the respondents Lamaida and Dickman falsely charged the petitioner with unprofessional, cruel and unskillful treatment of a patient admitted to the hospital by the petitioner. *The petitioner was not present or invited to this meeting.* At this meeting the Executive Committee voted to recommend that the petitioner be removed from the medical staff of the hospital (Record pages 308 313; 315-316).

On February 28, 1966 the petitioner was notified that the Executive Committee would meet on March 2, 1966 to consider the petitioner's conduct since October 2,

1965 (Record page 318). Petitioner was present at this meeting, which was conducted in a "Star Chamber" atmosphere; the fact that the Executive Committee had already determined its course of procedure and was acting with prejudice and in an arbitrary fashion is evidenced by the minutes, showing that the petitioner did not have counsel and also that there was no review of the facts of his work (Record pages 320-326).

The Executive Committee then formulated a statement to justify its recommendation of February 25, 1966. This recommendation was conveyed to the Active Medical Staff on March 2, 1966, and at the urging of the respondents LaMaida, Fowler, Hacker and Dickman, the Active Medical Staff concurred in the recommendation of the Executive Committee and notified the Board of Trustees that the Active Medical Staff was recommending that the petitioner be removed permanently from the Staff of the hospital (Record pages 320-326).

The petitioner was notified of the action of the Active Medical Staff on March 3, 1966 (Record pages 331-332). The petitioner attempted to avail himself of an Appeal of this decision to the Professional Matters Committee of the Board of Trustees. It was the position of the Board of Trustees that the petitioner was not entitled to an Appeal (Record pages 333-338). However, the petitioner was invited to appear before the Professional Matters Committee of the Board of Trustees without counsel on March 22, 1966. At this meeting, respondents Lamaida, Collins and Waltz made additional false, malicious and untrue statements in order to induce the Professional Matters Committee, if it, in fact, needed such inducement, to approve the action of the Active Medical Staff and the Executive Committee. At said meeting, the Professional Matters Committee did recommend to the respondent Trustees

that the termination of said hospital privileges be made (Record pages 339-344).

On March 22, 1966, the respondents, Board of Trustees, at a meeting from which meeting the petitioner was excluded, acted upon the recommendation of the Professional Matters Committee and terminated the petitioner's privileges at the hospital. Thereupon, the petitioner was notified that he no longer had privileges and he was forced to discharge his patients from the hospital and give up his treatment of them.

The petitioner immediately brought an action for a mandatory injunction against the hospital to restore him his privileges. Due to the exigencies and length of the docket and the need for extensive discovery procedures, the matter did not come for Trial until January, 1967. In the midst of Trial, the mandatory injunction action was dismissed by the petitioner without prejudice and this action was filed. This action was based upon a conspiracy to injure the petitioner's character and reputation, a conspiracy to deprive him of his constitutional rights under the Fourteenth Amendment and Ohio Constitution, deprivation of his constitutional rights under the Fourteenth Amendment and Ohio Constitution and in libel and slander. The matter came on for Trial and, after four weeks of trial before a jury, at the close of the petitioner's case, upon Motion of the respondents for a directed verdict, the Trial Court granted judgment for the respondents and delivered an opinion which is set forth in the Appendix at page 1.

The voluminous record of approximately 1,400 pages contains substantial professional testimony contradicting the charges of unprofessional treatment and establishing that this petitioner's techniques were within the accepted standards of the medical community.

The questions raised in the appeal to the Court of Appeals for the Eighth Judicial District of Ohio are set forth in the Appendix at page 57. A visiting Court from the Ninth Judicial District confirmed the decision of the Trial Court (Memorandum Opinion, Appendix page 5). From that decision an Appeal was taken to the Ohio Supreme Court. The questions of law and constitutional questions raised in the Ohio Supreme Court are set forth in the Appendix at page 58. That Court reviewed the Motion to Certify and dismissed the Appeal *sua sponte* upon the basis that there was no substantial constitutional question involved. (See Order, Appendix page 8.)

REASONS FOR GRANTING THE WRIT.

I. The decision of the Ohio Supreme Court conflicts with the decisions of the federal courts of appeals as to whether acceptance of Hill-Burton funds by private, non-profit hospitals carries with it the obligation to observe federal constitutional mandates.

The Ohio Supreme Court held, sua sponte, that "no substantial constitutional question" existed herein, despite petitioner's persistent and sustained insistence in *all* of the courts below that there was sufficient "State Action" herein for the Fifth and Fourteenth Amendments of The Constitution of the United States to apply. This holding stands in irreconcilable conflict with the decisions of the Fourth Circuit in *Simkins v. Moses H. Cone Memorial Hospital,* 323 F.2d 959 (4th Circ. 1963), cert. den. 376 U.S. 938 (1964), and *Sams v. Ohio Valley General Hospital Association,* 413 F.2d 826 (4th Circ. 1969).

Both *Simkins, supra,* and *Sams, supra,* involved private, non-profit hospitals in the identical situation as the hospital in the instant case, i.e., all of these hospitals had

applied for and received Federal moneys known as Hill-Burton Funds (Hospital Survey and Construction Act), 60 Stat. 1041 (1946), as amended, 42 U.S.C. § 291 et seq. The question presented for the determination of the *Simkins* court was: "Whether the defendants have been shown to be so impressed with a public interest as to render them instrumentalities of government, and thus within the reach of the Fifth and Fourteenth Amendments to the Constitution of the United States." 323 F.2d at 965. The court there answered this question in the affirmative *Id.*, at 967. This is the same question which the petitioner herein urged to the Ohio courts.

Although *Simkins, supra,* involved a question of racial discrimination, ". . . the constitutional principles there announced apply in full strength to the non-racial issues of this case." *Sams, supra,* 413 F.2d at 828.

The Fourth Circuit further held: "Substantial Federal moneys invited and flowing into the defendant hospital under The Hill-Burton Act entail, in return, obligations of observance of Federal constitutional mandates. Disregard of them is State Action, for the act trusts the State to maintain a fair and just governance of [those] hospitals accepting the aid of the legislation. These are axioms of ready verification." *Id.,* at 829. *Citta v. Delaware Valley Hospital,* 313 F. Supp. 301 (E.D. Pa. 1970), another case dealing with the identical factual setting as exists herein, characterized it as a *"well-established principle"* that "state action" exists, and Federal constitutional rights apply, whenever a private hospital accepts Hill-Burton funds. *Id.,* at 307. An even more recent case, *O. T. Chiaffitelli v. Dettmer Hospital, Inc.,* ___ F.2d ___ (6th Circ. 1971) [No. 20390; decided and filed, Jan. 5, 1971] regarded the receipt of Hill-Burton aid as "fatal" to the defendant hospital's contention that an action for the ap-

plication of federal rights under 42 U.S.C. § 1983 could not be maintained against a private hospital. *Id.*, at ___.

In short, there is no question that the Federal Courts have recognized the presence of sufficient "state action" in the acceptance of Hill-Burton moneys to justify the application of Federal constitutional rights. The conflict between the decisions of those courts and those of the Ohio courts justifies the grant of certiorari to review the judgment below.

II. The decision of the court below conflicts with the decisions of the federal courts as to constitutionally required minimum elements of due process essential to an administrative evidentiary hearing.

On the basis of the facts of the instant case as summarized in the "Statement of the Case" *supra*, the court below, in holding that no substantial constitutional question was involved, impliedly held that the procedures followed herein were sufficient to meet the requirements of the Fifth and Fourteenth Amendments. In so holding, the court below placed itself in direct conflict with the decisions of both this Court and of the lower Federal Courts.

In its last term, this Court stated, in *Goldberg v. Kelly*, 397 U.S. 254 (1970):

> " 'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 783; 58 L. Ed. 1363 (1914). The hearing must be 'at a meaningful time and in a meaningful manner.' *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d 62 (1965). In the present context these principles require . . . timely and adequate notice *detailing the reasons for a proposed termination*, and an effective opportunity to defend *by confronting any*

adverse witnesses and by presenting his own arguments and evidence orally.' " *Id.*, at 267 (emphasis added).

In that same opinion, this Court then proceeded to elaborate on the above rights and to enumerate others which it considered essential to a fundamentally fair hearing, as follows:

"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. *Id.*, at 269 . . .

'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.' . . . Counsel can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interest of [his client]. We do not anticipate that this assistance will unduly prolong or otherwise encumber the hearing. *Id.*, at 270 . . .

Finally, the decisionmaker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing . . . To demonstrate compliance with this elementary requirement, the decisionmaker should state the reasons for his determination and indicate the evidence he relied on . . . And, of course, an impartial decision maker is essential. *Id.*, at 271"

The propriety and wisdom of the aforesaid essential elements of due process in such a setting as this have been concurred in and heartily approved of in *Jones v. Snead*, 431 F.2d 1115 (8th Circ. 1970), *Meredith v. Allen County War Memorial Hospital Commission*, 397 F.2d 33 (6th Circ. 1968) and *Birnbaum v. Trussell*, 371 F.2d 672 (2nd Circ. 1966), as well as by the Federal District Courts in *Citta v. Delaware Valley Hospital*, 313 F. Supp. 301 (E.D. Pa. 1970), *Esteban v. Central Missouri State College*, 277 F. Supp. 649 (W.D. Mo. 1967) aff'd 415 F.2d 1077 (8th

Circ. 1969), *Scoggin v. Lincoln University*, 291 F. Supp. 161 (W.D. Mo. 1968) and *Orr v. Trinter*, ___ F. Supp. ___ (S.D. Ohio 1970).

Also in *Goldberg, supra*, this Court properly acknowledged that adherence to the essentials of procedural due process is especially important where the determination to be made by the administrative body rests on ". . . incorrect or misleading factual premises or on misapplication of rules or policies to the facts of the particular case," when such have been challenged by the affected party. *Goldberg, supra*, at 267. To the same effect, see *Birnbaum v. Trussell*, 371 F.2d 672 (2nd Circ. 1966), where the Second Circuit said:

> ". . . whenever there is a substantial interest, other than employment by the state, involved in one discharge of a public employee, he can be removed neither on arbitrary grounds nor without *a procedure calculated to determine whether legitimate grounds do exist.*" *Id.*, at 678 (emphasis added).

Highly relevant to this point is the comment of the District Court in *Citta, supra*, 313 F. Supp. at 308, 309:

> "It is obvious that what actually occurred on the operating table, the patient's condition. What the surgeon observed and the reasons for the medical and surgical judgments made, are all matters determinable only by an investigation of their critical factual bases. *The operating surgeon is in possession of almost all the facts necessary to evaluate the decisions he himself made.* We thus consider it a sensible postulate that before a surgeon's privileges are permanently restricted on the basis of what he did in any given instance, he must be given an opportunity to defend and explain his actions." (Emphasis added.)

In the case at bar, the Record contains considerable testimony supporting petitioner's medical judgment on the

matters of treatments and techniques which respondents alleged to have been improper, and upon which respondents allegedly based their various determinations.

Clearly, the decisions of this Court and of the lower Federal Courts conflict with the decisions of the Courts of the State of Ohio regarding the extent to which particular aspects of due process are applicable to a situation of this sort. This conflict justifies the grant of certiorari to review the judgment below.

III. The court below clearly erred in holding that the Civil Rights Act of 1871 was inapplicable to the instant case.

In its oral opinion (concededly "incoherent"), the Trial Court stated:

> "There is conspiracy which is set forth in the Civil Rights Act which is unlawful, but I can't see how the Civil Rights Act applies in this case. Just reading it, they (sic) are aimed at the Ku Klux Klan and that type of activity. There is no evidence of that here.
>
> Of course, there is the Meredith case. The whole subject applies to the Civil Rights statute. I believe the Meredith case is entirely right as far as its narrow holdings, but this language about the Civil Rights Act, I don't understand." (Appendix page 3.)

The narrow holding of the case cited by the Trial Court, *Meredith v. Allen County War Memorial Hospital Commission,* 397 F.2d 33 (6th Circ. 1968), was that 42 U.S.C. § 1983 and § 1985 (3) applied where the complaint alleged that the hospital commission and its individual members conspired to deny the plaintiff his constitutional rights in violation of the Civil Rights Act of 1871, since that hospital was a recipient of Hill-Burton funds. In light of such a holding, the petitioner in the instant case utterly fails to comprehend the reasoning and decision of

the Trial Court and of the Appellate Court which approved that decision. So far as petitioner is able to see, the holding in *Meredith, supra,* defies the logic of the Trial Court. In support of petitioner's contention stand *Birnbaum v. Trussell,* 371 F.2d 672, 673 (2nd Circ. 1966) and *Citta v. Delaware Valley Hospital,* 313 F. Supp. 301 (E.D. Pa. 1970).

Furthermore, even absent an allegation of conspiracy, an allegation of a denial of due process in the decision-making procedures by which a hospital recipient of Hill-Burton funds restricts the privileges of a physician practicing therein has also been held to state a claim under the Civil Rights Act of 1871. *Citta, supra,* 313 F. Supp. at 308.

Such manifest and inexplicable error justifies the grant of certiorari to review the judgment below.

Respectfully submitted,

SANFORD W. LIKOVER,
711 Leader Building,
Cleveland, Ohio 44114,
Attorney for the Petitioner.